

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GENE GILBERT ELLIS,

Petitioner,

v.

No. 18-CV-00012-JCH-KRS

ATTORNEY GENERAL STATE OF
NEW MEXICO,

Respondent.

**ORDER GRANTING MOTION TO PROCEED
IN FORMA PAUPERIS AND TO ANSWER**

This matter is before the Court on Petitioner Gene Gilbert Ellis' Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By A Person In State Custody [Doc. 1] and Application To Proceed In District Court Without Prepaying Fees or Costs [Doc. 5]. Because it appears that Petitioner is unable to prepay the filing fee pursuant to 28 U.S.C. § 1915, the Court will grant Petitioner's application to proceed *in forma pauperis*. Although Petitioner's § 2254 Petition does not identify a respondent, it is well established that "in habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004); *see also* Rule 2(a) of the Rules Governing Section 2254 Cases In The United States District Courts. Petitioner currently is incarcerated at the Lea County Correctional Facility (LCCF) and, therefore, Raymond Smith, the Warden at LCCF, will be added to the caption as the Respondent. The Court has reviewed Petitioner's § 2254 Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and determined that it is not subject to summary dismissal. Therefore, the Court will order Respondent Smith to file an answer to the Petition.

IT IS, THEREFORE, ORDERED that Petitioner's Application To Proceed In District Court Without Prepaying Fees or Costs [Doc. 5] is **GRANTED** and Petitioner may proceed without prepayment of costs or other fees or the necessity of giving security therefor;

IT IS FURTHER ORDERED that the Clerk of the Court is directed to add Raymond Smith, Warden at LCCF, to the caption as the Respondent and to forward copies of this Order and the § 2254 Petition [Doc. 1] to Respondent and the New Mexico Attorney General;

IT IS FURTHER ORDERED that Respondent answer the § 2254 Petition within thirty (30) days from entry of this Order. Respondent's answer shall advise, but is not limited to, whether Petitioner has exhausted his state court remedies as to the issues raised in the § 2254 Petition. Respondent shall attach to his answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. In the event Respondent denies exhaustion, he shall identify the State procedures currently available to Petitioner given the nature of Petitioner's claims and their procedural history.



KEVIN R. SWEAZE
UNITED STATES MAGISTRATE JUDGE